



THE INTERIM

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INTERIM COMMITTEES ISSUING FINAL REPORTS

Legislative committees that met during the 2007-08 interim to study specific policy issues are completing their final reports to the 61st Legislature.

As the reports become available, they are being published on the Legislative Branch website at www.leg.mt.gov under "Between Sessions." Individual reports are also available on the webpages of the specific committees that produced them.

The following reports are expected to be available to the public by the time the 2009 session begins on Jan. 5:

- **Carbon Sequestration Study: An Analysis of Geological and Terrestrial Carbon Sequestration Regulatory and Policy Issues.** (Energy and Telecommunications Interim Committee). This report is intended to serve as an informational tool for lawmakers, lobbyists, and the general public to better understand the science of carbon sequestration and the regulatory issues surrounding the subject.
- **Case Study Report – House Bill 831.** (Water Policy Interim Committee) Through House Bill 831, the 2007 Legislature directed the Montana Bureau of Mines and Geology to study the closed basins in Montana and assess the range of potential impacts of groundwater development on surface flows. The interim committee studied the basins of the Bitterroot, Beaverhead, and Gallatin Rivers.
- **Climate Change: An Analysis of Climate Change Policy Issues in Montana.** (Environmental Quality Council) The council reviewed volumes of information and public testimony on the subject of climate change. This report highlights key information.
- **Consumers, Providers, and the State: Their Roles in Health Care Access and Costs.** (Children, Families, Health, and Human Services Interim Committee) Through Senate Joint Resolution 15, the 2007 Legislature called for an interim study of health-care delivery systems in Montana to determine how the different means of providing health-care services affect the cost and quality of care. This report summarizes the results of that study. It includes an examination of economic credentialing and specialty hospitals.
- **Facing the Gordian Knots of Health Care Reform: Coverage, Costs, and Responsibility.** (Economic Affairs Interim Committee). This report is a result of a study requested in 2007 by House Joint Resolution 48. The report is a primer on health insurance reform in the state and provides background on the environment in Montana for health insurance coverage and access to health care in general. Also included is information about health-care reforms in other states.
- **Final Report of the 2007-2008 Economic Affairs Interim Committee.** (Economic Affairs Interim Committee) This includes reports on two resolutions adopted during the 2007 legislative session: Senate Joint

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THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

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Resolution 39, requesting a study of the economic impacts of university research, and House Joint Resolution 28, requesting a study of Montana's business infrastructure.

- **Final Report of the 2007-2008 Law and Justice Interim Committee: Diverting the Mentally Ill from the Justice System and Providing Alternatives to Involuntary Commitment.** (Law and Justice Interim Committee) This report summarizes the findings and recommendations of four studies requested by the 2007 Legislature: a study of the juvenile justice system (Senate Joint Resolution 6), a study of prison population growth and non-prison alternatives for drug offenders (SJR 24), a study of mental health treatment in the adult and juvenile justice system (HJR 26), and a study of the process and costs of involuntary precommitment (HJR 50).
 - **From the Ballot Box to the Mailbox? Evaluating Montana's Election Procedures and Options.** (State Administration and Veterans' Affairs Interim Committee) Through House Joint Resolution 46, the 2007 Legislature requested a study of Montana's election laws with an eye toward a comprehensive cleanup and clarification of existing laws, as well as consideration of expanding the use of mail ballot elections.
 - **HB 49 Report: Special Districts.** (Education and Local Government Interim Committee) A subcommittee inventoried local government special-purpose districts in Montana and recommended statutory changes to improve the efficiency of their administration.
 - **Irrigation in Montana – A Program Overview and Economic Analysis.** (Water Policy Interim Committee) The 2007 Legislature appropriated \$200,000 for a study to evaluate the economic benefits of irrigation in Montana and the economic impacts of investment in existing and new irrigation projects.
 - **Legislative Branch Computer System Plan.** (Computer System Planning Council) The report outlines plans for updating and maintaining the computer environment of the Legislative Branch over the next biennium.
 - **A Legislator's Guide to Montana's Public Retirement Systems: 2008.** (State Administration and Veterans' Affairs Interim Committee) This report is a primer on the history and status of Montana's public employee retirement systems. The 2007 Legislature requested the study through passage of House Joint Resolution 59.
 - **Perspectives on Public Power: A Review of the Public Power Model, Its History, and Its Potential in Montana.** (Energy and Telecommunications Interim Committee) The report offers information on the public power model, as well as models used in other states.
 - **Petroleum Tank Release Fund: An Analysis of Issues Surrounding the Solvency of the Fund.** (Petroleum Tank Release Fund Subcommittee) A joint panel of the Legislative Finance Committee and the Environmental Quality Council examined the solvency of the fund, which posted a \$2.4 million shortfall in fiscal year 2007.
 - **The Price of Flame: Final Report of the Fire Suppression Committee.** (Fire Suppression Committee) The report explores the trends toward more extreme wildland fire seasons and the rising costs of fire protection and suppression. It recommends actions for citizens who live in fire-prone areas and for representatives of private industry and local, state, and federal governments.
 - **Report to the State of Montana: Legislative Mental Health Study.** (Children, Families, Health, and Human Services Interim Committee) The report reviews extensive data on the people served by Montana's publicly funded mental health system, as well as the services provided by the system. It examines gaps in the current system of services and recommends ways to deal with them. It also identifies financing opportunities and makes recommendations for system reorganization.
 - **Taxation and School Funding.** (Revenue and Transportation Interim Committee) Senate Joint Resolution 31 requested an interim study of taxation and school funding. The final report summarizes information contained in interim reports on changing demographic trends in Montana and on K-12 school revenue systems, including state and local property taxes, block grants, and nonlevy revenue. The report includes language for a possible constitutional amendment that would allow for a statewide property tax levy on certain classes of property for schools. The report summarizes the revenue potential from sales tax proposals introduced in prior sessions and other information on sales taxes.
 - **Time for a Check-Up: Monitoring Health Care Services in Montana.** (Children, Families, Health, and Human Services Interim Committee) This report explores the work of the committee during the 2007-08 interim, with a particular focus on a study of emergency medical services requested through Senate Joint Resolution 5. The report also outlines the committee's work in monitoring the activities of
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the Department of Public Health and Human Services, exploring the state's health-care delivery system, and reviewing and acting on a mental health study carried out by a consulting firm. The SJR 15 and mental health studies are discussed more fully in other reports.

- **Trust Land Management: An Analysis of Conservation Easements and Other Uses of State Trust Land.** (Environmental Quality Council) The council was authorized through passage of House Joint Resolution 57 to study the impacts of conservation easements on state trust lands.
- **Water–Montana's Treasure.** (Water Policy Interim Committee) With passage of House Bill 304, the 2007 Legislature created this committee to study a wide range of water issues. The committee was tasked with helping to provide clear policy direction that will ensure fair and reasonable use of Montana's water as demands for it increase while supplies remain the same or decrease. This report summarizes the results of the committee's work.

LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee met Nov. 7. The audit reports presented to the committee are available at <http://leg.mt.gov/auditreports>. The following reports were issued:

Financial-Compliance Audits

Montana School for the Deaf and Blind (08-22A)...This audit report contains the results of the financial-compliance audit of the Montana School for the Deaf and Blind (school) for the two fiscal years ended June 30, 2008. The recommendation in this report is related to noncompliance with state accounting policy. The prior audit report contained no recommendations to the school.

An unqualified opinion was issued on the financial schedules contained in this report. The reader may rely on the financial information presented in the financial schedules and the supporting data on the state's accounting system.

Board of Public Education (08-22B)...This report contains the results of the financial-compliance audit of the Board of Public Education (board) for the two fiscal years ended June 30, 2008. A qualified opinion was issued on the fiscal year 2006-07 and 2007-08 Schedules of Expenditures & Transfers-Out and an unqualified opinion on the other fiscal year 2006-07 and 2007-08 financial schedules contained in this report. The Independent Auditor's Report and the recommendation contained in the report discuss the misstatement on the board's financial schedules. The reader should use caution when relying on the financial information presented and the supporting information on the state's

accounting system.

This report contains two recommendations to the board related to compliance with state accounting policies. The prior audit report contained no recommendations to the board.

Montana Historical Society (08-24)...This report documents the results of the financial-compliance audit of the Montana Historical Society (society) for the two fiscal years ended June 30, 2008. The previous audit report contained eight recommendations. Of these, six were implemented, one was partially implemented, and one was not implemented.

This report contains five recommendations. The recommendations include areas where the society can improve compliance with federal regulations, state laws and regulations, and society policies.

An unqualified opinion was issued on the financial schedules contained in this report. This means the reader can rely on the presented financial information and the supporting data on the state's accounting records.

Department of Justice (08-18)...This report documents the results of the financial-compliance audit of the Department of Justice (department) for the two fiscal years ended June 30, 2008. The previous audit report contained five recommendations. Of these, three were implemented and two were partially implemented.

This report contains five recommendations including accounting misstatements related to Consumer Protection Office activity and areas where internal controls should be improved. This report also contains a disclosure issue related to Consumer Protection general fund transfers.

An unqualified opinion was issued on the financial schedules contained in this report. This means the reader can rely on the presented financial information and the supporting data on the state's accounting records.

Office of the Secretary of State (08-19)...This financial-compliance audit report documents the results of the audit of the Office of the Secretary of State (office) for the two fiscal years ended June 30, 2008. A qualified opinion was issued on the Schedule of Changes in Fund Balances for the fiscal year ended June 30, 2007, and the Schedule of Expenditures & Transfers-Out for the fiscal year ended June 30, 2007. The reader should use caution when using the information presented in these schedules, as well as the supporting data on the state's accounting system for fiscal year 2006-07. An unqualified opinion was issued on the Schedule of Revenue & Transfers-In for the fiscal year ended June 30, 2007, and on all three financial schedules for the fiscal year ending June 30, 2008. The reader may rely on the presented financial information and the supporting data on the state's accounting system for fiscal year 2007-08.

This audit report contains four recommendations. The recommendations relate to ensuring fees charged for business services are commensurate with the cost of providing those services, recording prior year expenses in accordance with state accounting policy, improving internal

controls, and forfeiting excess vacation leave. The prior audit of the office included six recommendations. The office implemented five of these recommendations. The recommendation not implemented relates to ensuring fees charged for business services are commensurate with the cost of providing those services, which is a recommendation contained in this report.

State Auditor's Office (08-20)...This report contains the results of the financial-compliance audit of the State Auditor's Office (office) for the two fiscal years ended June 30, 2008. This report contains eight recommendations concerning internal controls, compliance with state laws, and accounting issues. The prior financial-compliance audit of the office for the two fiscal years ended June 30, 2006, contained seven recommendations, all of which were implemented.

An unqualified opinion was issued on the office's financial schedules for fiscal years 2007-08 and 2006-07. This means the reader may rely on the financial information presented in the financial schedules and supporting data on the state's accounting system.

Office of the Governor and Lieutenant Governor (08-23)...This report contains the results of the financial-compliance audit of the Office of the Governor and Lieutenant Governor (office) for the two fiscal years ended June 30, 2008. An unqualified opinion was issued on the fiscal year 2007-08 financial schedules, a qualified opinion on the fiscal year 2006-07 Schedule of Revenues & Transfers-In, and an unqualified opinion on the other fiscal year 2006-07 financial schedules contained in this report. The reader should use caution in relying on the information presented in the fiscal year 2006-07 Schedule of Revenues & Transfers-In, as well as the supporting data on the state's accounting system. The reader can rely on the information presented in the fiscal year 2007-08 financial schedules and in the fiscal year 2006-07 Schedule of Changes in Fund Balance and Schedule of Expenditures & Transfers-Out, as well as the supporting data on the state's accounting system.

This report contains four recommendations related to compliance with state law and state accounting policy. The prior report for the two fiscal years ended June 30, 2006, contained three recommendations to the office. The office implemented two and partially implemented one.

This report also contains disclosure issues related to goods and services provided by other state agencies for benefit of the Governor's Office and the Interagency Committee for Change by Women.

Judicial Branch (08-27)...A financial-compliance audit of the Judicial Branch (branch) was performed for the two fiscal years ended June 30, 2008. An unqualified opinion was issued on the financial schedules contained in this report. This means the reader may rely on the information presented in the financial schedules and the supporting data on the state's accounting system.

This report contains three recommendations where the branch could improve compliance with state law and ensure all activity is appropriately recorded on the accounting records. The branch implemented all five prior audit recommendations.

Department of Public Service Regulation (08-26)...A financial-compliance audit of the Department of Public Service Regulation (department) was performed for the two fiscal years ended June 30, 2008. The prior audit report did not contain any recommendations. This report contains one recommendation related to improving internal controls of the department.

An unqualified opinion was issued on the financial schedules contained in this report. This means the reader may rely on the financial information presented and the supporting data on the state's accounting system.

Department of Corrections (08-15)...This financial-compliance audit report contains the results of our audit of the Department of Corrections for the two fiscal years ended June 30, 2008. An unqualified opinion was issued on the financial schedules contained in this report. This means the reader can rely on the financial information presented and the supporting detailed information on the state's accounting records.

This report contains 14 recommendations. The recommendations relate to the department's control structure, contract administration, various aspects of financial accountability, and the department's compliance with state laws, state policies, and its own policies. The prior audit report contained 12 recommendations. The department implemented five recommendations, partially implemented four recommendations, and did not implement three recommendations.

Department of Environmental Quality (08-16)...A financial-compliance audit of the Department of Environmental Quality (department) was performed for the two fiscal years ended June 30, 2008. An unqualified opinion was issued on the financial schedules contained in this report. The reader may rely on the financial information presented in the financial schedules and the supporting data on the state's accounting system.

This report contains two recommendations where the department could improve compliance with the federal regulations and state law and accounting policy. The previous audit report contained two recommendations. The department implemented one recommendation and partially implemented one recommendation.

Department of Military Affairs (08-25)...This is the financial-compliance audit of the Department of Military Affairs (department) for the two fiscal years ended June 30, 2008. The audit report contains eight recommendations related to internal controls and state and federal compliance. The previous audit report contained six recommendations; the department implemented five and did not implement one recommendation.

An unqualified opinion was issued on the financial schedules presented in this report. This means the reader can rely on the presented financial information and the supporting detailed information on the primary accounting records.

Department of Natural Resources and Conservation (08-17)...This report documents the results of the financial-compliance audit of the Department of Natural Resources and Conservation (department) for the two fiscal years ended June 30, 2008. An unqualified opinion was issued on the financial schedules contained in the report. This means the reader may rely on the financial information presented and the supporting accounting records.

This report contains 17 recommendations. The recommendations are related to internal controls, financial activities related to fires, trust land administration, and compliance with state law. This report also contains two disclosure issues related to meal reimbursement and leases of trust lands. The previous report contained eight recommendations to the department. The department implemented three, partially implemented three, and did not implement two of the recommendations.

Information Systems Audit

Lottery Security Audit Memorandum (08DP-05)...The Montana Lottery was created in 1987, and its operations are entirely funded by the sale of lottery tickets. Net profits from the sale of tickets are transferred into the state's general fund. State law requires the Legislative Audit Division to conduct a comprehensive audit of the Montana Lottery security every two years.

The LAD information systems audit team performed an audit of Montana Lottery security in the areas required by 23-7-411, MCA. The primary objective was to evaluate the existence and operation of security controls and evaluate compliance in the areas specifically outlined in state law. Four areas were noted where controls could be strengthened:

- physical access to Lottery vendor facility;
- segregation of duties related to scratch tickets;
- vendor notification and Lottery documentation of system access; and
- regular monitoring of vendor access to Lottery systems ;

Next Meeting in December...The Legislative Audit Committee is tentatively scheduled to meet on Wednesday, Dec. 17 in Room 172 of the Capitol building.

For more information about the committee, contact Tori Hunthausen, legislative auditor, at (406) 444-3122 or thunthausen@mt.gov.

LEGISLATIVE FINANCE COMMITTEE

LFC met in November...The Legislative Finance Committee (LFC) met Nov. 18. Key items discussed at the meeting are described briefly below. Reports and audio minutes of the meeting are on the Legislative Fiscal Division (LFD) website at www.leg.mt.gov/lfc. For more information about the committee contact Clayton Schenck at cschenck@mt.gov or any LFD staff at (406) 444-2986.

Connecticut representative promotes performance measures...Rep. Diana Urban of the Connecticut Legislature and Adam Luecking of the Results Leadership Group in Bethesda, MD, met with legislators and legislative staff to discuss how Connecticut and other states have implemented the concepts of Results Based Accountability (RBA) as part of the appropriations process. This approach to budgeting begins with the desired result and works backward to identify the resources that a program needs to achieve the result.

Urban, who has championed RBA efforts in Connecticut, combined anecdotal information with descriptions of the approach in explaining its success in her state. Much of what she described is similar to the performance measurement efforts that the LFC with staff assistance has developed for Montana. Urban said with the data that has been generated so far, Montana is well-positioned in applying the RBA approach by identifying one or two quality of life results to pilot. A quality of life result might, for example, be "healthy children" or "children succeeding in school". The approach would then lead policy makers and program staff to identify and analyze relevant data to determine how Montana is doing, but, more important, to determine what changes can be made to improve results.

A summary of the elements of RBA are available on the LFD website under the Nov. 18 LFC meeting. For help in locating the summary or for more information, contact Barb Smith at basmith@mt.gov or Kris Wilkinson at kwilkinson@mt.gov or either at (406) 444-2986.

State General Fund Revenue Outlook...LFD staff reported that there has been a significant change in the revenue outlook for the 2011 biennium since the "Big Picture Report" was issued six weeks ago. Global Insight, the state's source for economic data, revised its forecasts for the U.S. and regional economies, which includes Montana. Revenue from key tax sources are expected to decline from previously estimated levels. As a result, the general fund revenue estimates dropped by \$494 million, with all primary revenue sources showing weakness.

Under the revised estimate of \$3.832 billion for the 2011 biennium, when combined with the anticipated fund balance from the end of the 2009 biennium (\$374 million), there should be sufficient money to fund the present law level of the budget, with nearly \$37 million available for ongoing initiatives. In addition, there should be about \$259 million for one-time initiatives, which could include setting aside a larger amount in a fund balance reserve as proposed

in the executive budget.

The reduction in general fund available is due in part to the passage of a citizen initiative (I-155) relating to expansion of health care for children, which is estimated to cost \$60 million in FY 2009 through FY 2011.

New estimates for individual income taxes and oil and gas production taxes were primarily the cause for the downward revisions. The revised revenue estimates were presented to the Revenue and Transportation Interim Committee at its Nov. 17-18 meeting (see this page for additional coverage). For more information, contact Terry Johnson at tjohnson@mt.gov or at (406) 444-2952.

Global Budget Issues: LFC Recommendations to the 2009 Legislature...The LFC adopted a series of recommendations on the legislative budget process that will be presented to the chairs of the House Appropriations and Senate Finance and Claims committees for their consideration and then for dissemination to the joint appropriation subcommittees. The joint subcommittees will spend the first several weeks of the session reviewing the executive budget proposal and crafting an initial version of the Legislature's budget. It is because the legislative budget process employs six appropriations subcommittees reviewing the same components of different agency budgets that a common approach to addressing certain overarching issues is desirable. With the global budget decision in hand, the subcommittees can proceed with the individual budget reviews knowing that there is equity and consistency in key decisions regarding those overarching issues of the total budget.

The 12 recommendations adopted are for the most part the same as or similar to recommendations made to past legislatures. Of the two newer items adopted by the LFC, one recommends to the appropriations committees that there only be one general appropriations act. For more information on the global issues generally, contact Jon Moe at jonmoe@mt.gov or at (406) 444-4581.

Committee Bills Approved...Three additional committee bills were approved by the LFC:

- LC 144: revise laws for acquisition of state office space;
- LC 571: study of options for providing workers' compensation coverage to state employees; and
- LC0628: revise statute regarding spending non-general fund money first.

These and other LFC committee bills are on the LFD website, or contact LFD staff for assistance in finding a copy of a bill.

Pension Funds...Carroll South, of the Montana Board of Investments, again was asked to discuss the performance of pension fund investments. South said that the paper value of pension assets has dropped nearly 27 percent between Oct. 31, 2007, and Oct. 31, 2008, and by about 19.5 percent since June 30, 2008, the most recent actuarial valuation of the various pension plans. That

valuation showed that all pension plans were "actuarially sound" except for the Teachers' Retirement System, which has an unfunded actuarial liability that could be amortized in 31.2 years versus the "soundness" threshold of 30 years. Undoubtedly, the picture has changed since June 30, but the results of the next actuarial valuation are not expected until a few months after June 30, 2009. The valuations are prepared annually according to law and are snapshots of the funds at a point in time. They do not capture changes to investments or variances from the actuarial assumptions that might occur between snapshots, but rather show assets and liabilities at a particular point in time. The most recent valuations (as of June 30, 2008) would not compel a need for legislative action in the next session. For more information, contact Jon Moe at jonmoe@mt.gov or at (406) 444-4581.

REVENUE AND TRANSPORTATION COMMITTEE

Tough times ahead?...The interim Revenue and Transportation Committee met Nov. 17-18 to adopt the initial revenue estimates for the 2009 legislative session. Section 5-5-227, MCA, provides, in part:

(2) The [revenue and transportation interim] committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

The committee's estimates will be contained in House Joint Resolution 2. The estimates are an important first step in assisting the Legislature develop a balanced budget.

State economists help the committee gain a sense of global, national, and state economic trends that may have an effect on revenue estimates. Patrick Barkey, director, Bureau of Business and Economic Research, University of Montana, painted a gloomy picture of the widening global economic downturn. In January 2008, the downturn was confined to housing, financial services, and durable goods industries in the U.S., with little effect on Montana other than the wood products industry. By November the financial and housing crisis had spread to consumer spending and to international economies. Montana experienced a downturn in housing and other construction projects and job losses. In addition, energy investments in the state may be affected. According to Barkey, Montana will suffer from the recession, but it should outperform the U.S. economy and rebound more quickly.

The Legislative Fiscal Division and the governor's budget office each develop biennium revenue estimates for the general fund and certain nongeneral fund revenue sources.

The Revenue and Transportation Committee typically makes a motion to adopt the LFD's recommendations and assumptions, including recommendations on certain nongeneral fund revenue (e.g., motor fuels taxes), and considers amendments based on presentations and committee discussion. The committee rejected a few amendments on tie votes, but agreed to exclude higher property values resulting from the reappraisal of agricultural lands, residential and commercial property, and forest lands in determining the estimates for property tax revenue.

Total general fund revenue for fiscal years 2009, 2010, and 2011 are estimated to be \$1,915.6 million, \$1,873.6 million, and \$1,941.5 million, respectively. As more information becomes available, these estimates are likely to change as the Legislature considers HJR 2 during the 2009 session.

Property reappraisal--meeting set for Dec. 8...At the November meeting, the Department of Revenue presented a preliminary analysis of the six-year property reappraisal of agricultural lands, residential and commercial property, and forest lands. The preliminary numbers indicate that the values of these types of properties will increase substantially because of reappraisal.

The Revenue and Transportation Committee is meeting Monday, Dec. 8 at 8 a.m. in Room 137 of the Capitol. The committee will go into a more in-depth analysis of property reappraisal, including changes by geographic region, urban and rural areas, resort areas, and energy producing areas. The committee will discuss ways to deal with the effects of reappraisal.

An agenda will be posted to the committee's

webpage when it is available.

For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or jmartin@mt.gov.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

Committee sponsoring education conference in January...The interim Education and Local Government Committee is sponsoring the conference on Learning for Life: Preschool through Continuing Education. It will be held in the Great Northern Hotel of Helena on Saturday, Jan. 10, from 9 a.m. to 3 p.m. An invitation is being extended to the entire Legislature as well as representatives of key education bodies.

Many states are evaluating the functions and phases of education in a more integrated way. They are building shared leadership and accountability into educational programming to secure more coherent outcomes for their citizens and their economies. But building an orderly progression of expectations and obligations, opportunities and supports, from preschool through higher and continuing education, is exceedingly difficult. The ELG Committee is pleased to bring to Helena renowned speakers who will describe hard-won lessons from work in their states. Representatives of Montana's broad-based Kindergarten to College Workgroup as well as the Department of Labor and Industry will also participate in the conference.

For more information about the conference, contact Casey Barrs, ELG Committee staff, at (406) 444-3957 or cbarrs@mt.gov.

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GRAVEL PITS: A ROCKY CONTROVERSY

By Joe Kolman
Legislative Research Analyst

Mining has a deep and controversial history in Montana. Battles have been waged over copper, gold, and coal.

Now, the mineral of contention is gravel.

There are statewide problems. Mine operators are frustrated that permits are not issued promptly. The Department of Environmental Quality, which approves operation and reclamation plans, acknowledges that deadlines have not been met, but it cites a lack of staff and other reasons for delays.

There are local concerns. Residents become enraged when a gravel pit--with its dust and noise--opens next door despite opposition. County officials often feel that ire because local governments, through zoning, may put conditions on pits and even forbid them in residential areas.

In recent months, flare-ups occurred in Missoula, Lewis and Clark, and Gallatin counties. The Water Policy Interim Committee and the Environmental Quality Council heard presentations on gravel pits during the interim. A legislative audit released last summer unearthed problems that have been festering for years.

"This is one of the major pinch points of the agency," DEQ Director Richard Oppen told the EQC last May.

Gravel pits will likely be much debated during the 2009 Legislature, touching on agency funding and regulation, local government powers, and other policy areas, such as public involvement and water.

THE PERMITTING PROCESS

Gravel pits are so ubiquitous in the state--they are found near almost any road--that many Montanans may not even consider them mines, at least not compared to the likes of the Berkeley Pit.

Scores of gravel pits are not big enough to be regulated. Anything less than 10,000 cubic yards does not need a permit under the Opencut Mining Act, passed in 1973 to regulate the extraction of gravel as well as sand, bentonite, clay, and other materials.

There are about 2,000 active, permitted, opencut mines in the state, most of them for sand and gravel. They can vary in size from a small pit used by a county road crew to large commercial operations such as the pits that line Interstate 90 just west of Bozeman.

The DEQ is responsible for reviewing permit applications, setting and releasing reclamation bonds, and conducting inspections of opencut operations.

To get a permit, an opencut operator must ensure that:

- the area will be reclaimed for at least one specific use, such as pasture, residence, recreation, industry, or wildlife habitat;
- acid drainage or sedimentation will be prevented;
- soil will be salvaged and replaced;
- grading of the area is compatible with the post-mining use;
- waste buried onsite does not hurt water quality;
- roads will be located, constructed, and maintained in a manner that controls and minimizes erosion;
- open burning is conducted in accordance with suitable practices for fire prevention and control;
- archaeological and historical values are given appropriate protection;
- the area is revegetated, unless otherwise stipulated by the post mining use, and that seeding is done in a manner to prevent erosion;
- reclamation be done as concurrently as possible with the mining;
- surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity;
- noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and
- any other procedures necessary to prevent harm to the land, structure, improvements or life forms will be implemented.

While the DEQ Opencut Program is the lead agency in processing opencut mining permits, other entities also play a role. Air and water quality permits may be needed from the DEQ. The Department of Transportation weighs in on traffic impacts. Depending on how water is used and how much is used, a permit may be needed from the Department of Natural Resources and Conservation.

At the local level, county governments may prohibit gravel pits in areas zoned residential, and may place conditions on operations within other zoned areas. However, some of the

more controversial mines have been proposed in areas that are unzoned but have houses in the vicinity.

A CHANGING LANDSCAPE

Jo Stephen steers her state-owned 1992 GMC Jimmy toward a gravel pit just outside Gallatin Gateway. Stephen is one of the DEQ's three full-time reclamation specialists for opencut mining. She and another specialist are based in Billings, the third is in Kalispell. For the most part, they are responsible for permitting about 100 new mines a year in addition to processing amendments to existing plans, inspecting mines, and checking on reclamation.

Stephen's territory runs roughly from Dillon to the North Dakota line.

In her eight years on the job, Stephen has seen a lot of gravel pits. She's also seen the landscape change. This particular mine in Gallatin County used to be surrounded by farm fields. Now, those fields are home to a crop of homes. Some of the owners don't like the noise, dust, or aesthetics of their industrial neighbor.

But industry officials are quick to point out that sand and gravel are needed for those new homes. While copper and gold sell for more by the ounce, sand and gravel are a key parts of the economy in Montana – especially in areas experiencing population growth where there are scads of new home foundations, driveways, and roads.

And gravel reserves are often located in alluvial valleys, which not surprisingly are often prime sites for new homes.

It is where these two land uses, gravel mining and residential development, intersect that controversies most often arise.

"That is about the time the gravel hit the fan," Opper told the EQC.

Homeowners near gravel pits are concerned about public safety, decreased property values, water contamination and availability, aesthetics, pollution from dust, noise, light, and increased truck traffic, according to the legislative audit.

These concerns may complicate the environmental reviews of opencut mines as required by the Montana Environmental Policy Act (MEPA). Public hearings are held for some applications, but not all. Stephen sees the impact in the amount of time she might spend on a single environmental assessment in Gallatin County versus a more rural area.

"It's like writing 50 of them in McCone County," she says.

IN THE COURTS

For some mine operators, the DEQ took too long to approve opencut applications. And some counties, including Gallatin, were looking at implementing emergency zoning regulations to target gravel pits in previously unzoned areas.

The gravel miners went to court.

The Opencut Mining Act provides that once an application is received, the DEQ has 30 days to review the application, inspect the site, and notify the applicant if the application is acceptable.

According to law, an application is acceptable if, among other things, it meets the permit requirements stated above, includes a bond, and it complies with any applicable local zoning regulations.

After an applicant responds to any identified deficiencies, the DEQ has another 30 days to determine if the application is acceptable. The agency also may extend either or both of the 30 day periods for another 30 days for sufficient cause.

There are several court cases, but the Cameron Springs case in Gallatin County is illustrative of some of the problems. The DEQ found the Cameron Springs application acceptable in January 2008, but several months later still had not done the required environmental assessment (EA). The agency said the EA would take three months.

Although District Judge Jeffrey M. Sherlock expressed sympathy for the plight of the DEQ, he ruled in favor of the gravel pit operators.

In April, Sherlock wrote that the DEQ is "overworked and understaffed" and that while the statutory timelines may be unrealistic, the law required the agency to issue the permit once it was deemed acceptable. He ordered the permit to be issued. The DEQ complied, though Opper said he was uncomfortable skipping the required environmental review.

The ruling upset residents of the area.

They intervened in the case and asserted that the order issuing the permits would harm their property values as well as the environment in and around the proposed gravel pits. In general, the neighbors argued that the constitutional guarantee of a clean and healthful environment is implemented by MEPA. Therefore, if the pits are not complying with the environmental analysis required by MEPA, their constitutional rights are being violated.

In May, Gallatin County implemented interim zoning regulations for sand and gravel mines.

In August, Sherlock ruled that the neighbors may have a point, saying the law is not clear. He stayed the previous order that the permits be granted, though DEQ had already complied with it. Sherlock said the case may be decided by the Montana Supreme Court.

But this time, he was less kind to the DEQ. The judge noted that the agency appeared to be "doggedly refusing" to do anything to review the permits while citing a lack of staff--

even though the gravel operator offered to pay for the environmental analysis.

Opper said the agency did not put any more time into reviewing the permits because the judge ordered the permits issued. With a backlog of applications, Opper said it didn't make sense to review a permit that was already issued.

The case has been appealed to the Supreme Court, but it's unlikely that any decision would be reached before the 2009 Legislature concludes.

AUDIT FINDINGS, DEQ RESPONSE

The court cases arose during the time the Opencut Mining Program, specifically the permitting process, was being examined by the Legislative Audit Committee. The audit findings included:

Improving file documentation. The department's official files were missing documentation necessary to issue an opencut mining permit.

Formalizing the permitting process. The department had an informal application process for permit applicants and department personnel, which can result in confusion among the regulated community and program staff.

Clarifying the department's role in processing applications. Although the department has a backlog of pending permit applications, program staff perform tasks beyond their statutory responsibilities, such as drafting application documents for mine operators.

Facilitating collection of the Resource Indemnity and Groundwater Assessment Tax. Not all opencut mine operators pay the tax, a primary source of program funding. While the Department of Revenue is responsible for collecting the tax, the Department of Environmental Quality can facilitate collection efforts by providing DOR with information about opencut mining activities.

Improving the management information system. DEQ does not collect enough information to effectively manage the Opencut Mining Program. Additionally, the department has not identified performance measures essential to a results-oriented management system.

Setting priorities for processing applications. Some applicants may have received preference when program personnel processed applications because there are no formal priorities for processing applications.

Clarifying public notification. Proposed opencut mines commonly generate public interest. However, state law does not require operators or the department to notify the public of proposed operations.

The audit also cited areas of concern outside of the scope of the audit.

The DEQ conducts limited monitoring of permitted mines. Because of limited resources, the agency says inspections are sparse; a mine may go for years without being inspected. The result is that bonds that are supposed to cover reclamation costs may be inadequate and operators may not be following the requirements of the permit.

While the purpose of the Opencut Mining Act is to ensure reclamation of opencut mines, the audit found a lack of enforcement. The audit found some cases where operators mined for extended periods without complying with the act, and, in one case, the DEQ did not initiate an enforcement action before the statute of limitations expired.

For the most part, the DEQ agreed with the findings of the audit. According to the agency, it has:

- developed comprehensive checklists of application components that can be used by applicants and DEQ reviewers, and has developed procedures to implement the checklists. The procedures aim to improve application quality, program and review quality, and timeliness.
- contracted with organizational specialists to evaluate the entire Opencut Program and identify areas of improvement and streamlining. The contractor will begin working with the department in mid-January 2009.
- met with Montana Association of Counties and Montana Contractors' Association to begin informing and training them on DEQ's new procedures.
- begun working with the Department of Revenue to share information.
- initiated database work to clarify data needs and data collection and storage procedures for better management of the program.
- started drafting an application review priority system which will allow for expedition of timely projects, such as highway construction efforts.

On the matter of staffing, the legislative auditors said they were unable to determine if the agency needed more staff. The DEQ has operated with the same number of staff for about 20 years, although the number and complexity of opencut mining applications has increased. In 2000, there were 59 permits issued, by 2006 the number had almost doubled. The auditors said a lack of program data as well as varied responsibilities among staff made it difficult to assess work load.

OPENCUT MINING LEGISLATION

As of this writing, there are at least 15 bill draft requests that propose revising opencut mining laws and the DEQ is discussing legislation with lawmakers and interest groups.

There are few details so far about possible proposals, but several bills in prior sessions attempted to provide funding for the program and to deal with the controversy between residential development and mining.

In 2005, an annual fee on gravel pits was proposed that would have raised enough money for two full-time employees and another half-time employee. House Bill 361 died in the last days of the session.

Also in 2005, House Bill 591 was signed into law. It enhanced the powers of a county to regulate opencut operations. Prior to that session, 76-2-209, MCA, said:

"The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under this chapter."

The 2005 changes said that sand and gravel operations could be "reasonably conditioned or prohibited" in any area zoned as residential by county commissioners. It further said:

"Zoning regulations adopted under this chapter may reasonably condition, but not prohibit, the complete use, development, or recovery of a mineral by an operation that mines sand and gravel, and may condition an operation that mixes concrete or batches asphalt in all zones other than residential."

In 2007, House Bill 557 attempted to limit what might be considered "residential" by requiring that in addition to the county definition of zoning, the land also had to be taxed as class four properties. The measure passed the House but died in the Senate.

A bill that generally revised the Opencut Mining Act passed, but it mostly focused on updating terminology and the process. It eliminated the one-time \$50 application fee, but another bill that would have established annual fees of up to \$600 failed.

Another 2007 proposal that died would have required that before a county implemented zoning regulations, the county prepare a report that identified sand and gravel resources in the area to be zoned.

FOR MORE INFORMATION

DEQ Opencut Mining Program:
<http://www.deq.state.mt.us/opencut/Index.asp>

Legislative Audit of Opencut Mining Process:
<http://www.leg.mt.gov/content/Publications/Audit/Report/08P-04.pdf>

Gallatin County Interim Zoning Regulations for Gravel Pits:
http://www.gallatin.mt.gov/public_documents/gallatincomt_plandept/uploadedpdfs/pd.final_signed_interim_reg.pdf



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 2008						
	1	2	3	4 LAWS demonstration, Room 102, 9:30 a.m.-11:30 a.m. Open to the public	5	6
7	8 Revenue and Transportation Committee, Room 137, 8 a.m. Media orientation to the Legislature, Room 102, 10 a.m.- noon	9	10	11	12	13
14	15 Committee chair training Rules Committee meetings Chair training for appropriations subcommittees	16	17 Legislative Audit Committee, Room 172	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January 2009						
				1	2	3
4	5 61st Legislature convenes, House and Senate chambers, noon	6 Law School for Legislators, House chamber, 8 a.m. to noon	7	8	9	10 Learning for Life (Education and Local Government Interim Committee), Great Northern Hotel, Helena, 9 a.m.-3p.m.
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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